

1 **UNITED STATES DISTRICT COURT**  
2 **SOUTHERN DISTRICT OF NEW YORK**

3 MULTIMEDIA PLUS, INC., et al.,

4 Plaintiffs,

5 v.

6 PLAYERLYNC, LLC,

7 Defendant.

Case No.: 14-8216 (WHP)

**DEFENDANT PLAYERLYNC LLC'S  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: November 6, 2015

Time: 11:00 a.m.

Courtroom: 20B

Judge: Hon. William H. Pauley III

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**NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS  
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on November 6, 2015, at 11:00 a.m., or as soon thereafter as this matter may be heard, in the United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, NY 10007, in the courtroom of the Honorable William H. Pauley III, Defendant PlayerLync LLC will and hereby does move the Court for an order granting judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) that all of the asserted claims of the patent asserted by plaintiffs in this case, U.S. Patent No. 7,293,025, are invalid as a matter of law under 35 U.S.C. § 101.

All of the asserted claims of asserted patent are directed to the abstract idea of administering a test, and none of the asserted claims contain any inventive concept. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Law in Support, U.S. Patent No. 7,293,025, the file history of U.S. Patent No. 7,293,025, the pleadings and papers on file in this action, any other matters upon which the Court may take judicial notice, the arguments of counsel, and any other matter that the Court may properly consider.

Dated: August 25, 2015

/s/ Ryan Tyz

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## MEMORANDUM OF LAW IN SUPPORT

### I. INTRODUCTION

A cornerstone of American patent law is the 150-year-old prohibition against owning naked ideas disembodied from actual inventions. This rule, a judicial interpretation of 35 U.S.C. § 101, prevents a patentee from owning abstract ideas and is intended to ensure that patents promote innovation by contributing to the store of public knowledge without burdening future innovation by others.

The patent asserted by plaintiffs Multimedia Plus, Inc. and Multimedia Technologies, LLC (“Plaintiffs”) against defendant PlayerLync, LLC (“PlayerLync”)—U.S. Patent No. 7,293,025 (“the ’025 patent”)—is a textbook example of an attempt to preempt basic aspects of organizing human activity while contributing nothing to the advancement of the useful arts. The ’025 patent simply recites functional steps of administering a test implemented on generic computing equipment, without any specific programming that was not already conventional at the time of the patent. Stripped of these gratuitous references to conventional and generic computing equipment performing conventional and generic computing functions—none of which is entitled to any inventive weight—the patent claims only the naked and disembodied idea of administering a test. This is not an invention. It is an idea only. And it is an idea as old as teaching itself.

As Federal Circuit Judge Mayer explained in a recent concurring opinion:

Unless we are to assume that the constraints explicit in the Intellectual Property Clause [of the United States Constitution] are mere surplusage, we are bound to ensure that the patent monopoly serves ‘[t]o promote the Progress of Science and useful Arts’ . . . . Section 101 is the gateway to the Patent Act for good reason. It is the sentinel, charged with the duty of ensuring that our nation’s patent laws encourage, rather than impede, scientific progress and technological innovation.

*Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 717-18 (Fed. Cir. 2014) (Mayer, J., concurring) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1301 (2012); *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U.S. 502, 511 (1917)).

### II. STATEMENT OF FACTS

The ’025 patent is titled “Hosted Learning Management System and Method for Training

Employees and Tracking Results of Same” and claims priority to an application (no. 10/812,674) filed on March 31, 2004. *See* Exhibit 1 (U.S. Patent No. 7,293,025). On June 22, 2015, Plaintiffs served their infringement contentions asserting claim nos. 1, 2, 4-7, 9-16 and 19 (the “asserted claims”). *See* Exhibit 2 (Plaintiff’s Preliminary Infringement Contentions).

#### A. The ’025 Patent’s Specification

The ’025 patent is directed to the naked idea of administering a test. *See, e.g.*, Abstract. The patent describes that this idea may be implemented using generic computer components (e.g., “local computer,” “human-computer interface,” “display,” “server,” “website,” “sorting software”). The patent does not disclose any algorithm, special programming or specialized technology. It does not describe any technological advance or suggest any novel way of administering a test. Rather, it recites only known technologies defined solely by their function—the well-known computer functions of inputting, transmitting, receiving, storing, sorting, and accessing data, functions that any generic computer can perform, and functions that generic computers were designed to perform and have performed since well before the ’025 patent.

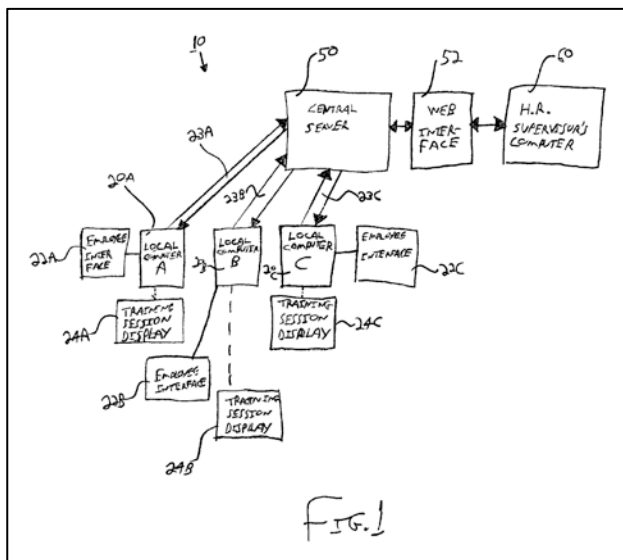


Fig. 1 of the ’025 patent, reproduced to the left, is an “overview schematic” of the alleged “inventive training system.” ’025 patent at 4:21-22. As the figure illustrates, the claimed invention consists of generic computing components labeled according to their generic computer names: (1) a “central server” (element 50); (2) an employee’s “local computer” (element 20); (3) a

supervisor’s “computer” (element 60); (4) a “communications link” (element 23); (5) a “training session display” (element 24); (6) an employee “interface” (“a first human-computer interface”) (element 22); and (7) a supervisor “web interface” (“a second human-computer interface”) (element 52). ’025 patent, Fig. 1; 2:33-35, 3:4-14, 3:52-56, 4:21-63, 5:32-34, 6:21-31.



1           The generic “central server” (element 50) is described in the patent simply as a “remote  
 2 computer server at a central location.” *Id.* at 2:35-36. The employee’s generic “local computer”  
 3 (element 20) and supervisor’s generic “computer” (element 60) are described in the patent simply  
 4 as a “local computer” and a “computer.” *Id.* at 2:28-35, 6:26-31. The generic “communications  
 5 link” (element 23) is described in the patent as “any type of communication link, but it is  
 6 preferred that it is a conventional Internet connection via a modem, DSL service, a proxy server,  
 7 or the like.” *Id.* at 5:32-46. The generic “display” (element 24A-C) is described in the patent  
 8 simply as “a display or presentation device” and is described in functional terms as “any form of  
 9 equipment capable of presenting information” including “non-visual means of communication.”  
 10 *Id.* at 4:42-43, 4:54-57. The employee’s generic “interface” (element 22) is described in the  
 11 patent in purely functional terms as a “human-computer interface” that “allows an employee,  
 12 upon watching a training program and coming to a question or quiz portion of the program, to  
 13 enter an answer or answers into local computer 20 . . . [and] to enter identification information as  
 14 needed,” and “is contemplated to include *any and all* human-computer interfaces” such as “a  
 15 keyboard, a mouse, a touch-screen (either integral with display 24 or separate therefrom), voice  
 16 recognition software, or an IVR system.” *Id.* at 2:33-35, 4:60-67, 5:3-8 (emphasis added).  
 17 Similarly, the supervisor’s generic “web interface” (element 52) is described in the patent in  
 18 purely functional terms as a “human-computer interface” and “web page” that allows a supervisor  
 19 to “access the data [employee test information] from her computer via the Internet” and that is  
 20 “dynamically created as a web interface pursuant to the [supervisor’s] data sorting requests.” *Id.*  
 21 at 3:4-14, 3:52-56, 6:26-31.

22           In addition to the generic hardware computing components depicted in Figure 1, the  
 23 specification of the ’025 patent describes generic software: (1) a “training program . . . resident  
 24 on the local computer . . . including an interactive test having questions” (*id.* at 2:30-33); and (2)  
 25 “software resident on the central server for sorting the test information” (*id.* at 2:60-62.). The  
 26 ’025 patent states that the training program “may be resident on the memory of the local  
 27 computer 20 in the form of software (e.g., a Macromedia Director file), or . . . may be insertable  
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1 into a local computer 20 and resident on a medium such as a CD-ROM or DVD” or “any other  
 2 medium.” *Id.* at 4:27-34. The patent describes this generic software in purely functional terms: it  
 3 allows an employee to log into the system using a unique identifier, “tell[s] the employee which  
 4 training module he is supposed to complete,” presents “the training program on display 24,”  
 5 “present[s] [the employee] with one or more questions in the form of a quiz or test,” allows the  
 6 employee “to enter an answer or other test information” into local computer 20, and “uploads that  
 7 information to central server 50 via link 23.” (*Id.* at 5:47-6:7.) The ’025 patent also describes  
 8 “separating the training program from the answers” so that “[w]hen an employee interacts with  
 9 the training program, the local computer transmits only the employee’s identifier and test  
 10 information to the central server.” (*Id.* at 2:37-40, 2:54-60.) The ’025 patent describes the  
 11 sorting software on the central server in purely functional terms as well: “As central server 50  
 12 receives test information from local computer 20, software resident on central server 50 . . . sorts  
 13 the test information into relevant categories,” tallies the employee’s answers, transmits “results  
 14 from the tallying . . . from the server to the local computer [where they] are accessible to the  
 15 employee,” and allows a supervisor using the web interface to access the test information on the  
 16 central server “on demand” pursuant to the supervisor’s data sorting requests. (*Id.* at 2:61-3:11,  
 17 6:21-34.)

18 Nothing in the specification even purports to describe any new technological advance to  
 19 implement any of these functional requirements. There is no particular computer programming,  
 20 system logic, or algorithmic steps. There is not a single improvement to the functioning of any  
 21 computer, server, interface, website, software, or any other technology or technical field. To the  
 22 contrary, the ’025 patent is completely agnostic about the particular technology that could (to say  
 23 nothing of should) be used to implement its basic idea. Ultimately, the specification describes  
 24 nothing more than a pure abstraction implemented using generic computer technology—a naked  
 25 idea disembodied from any reference to any particular, much less inventive, technology.

## 26 **B. The ’025 Patent’s Claims and Prosecution History**

27 The ’025 patent has only two independent claims (nos. 1 and 12), both of which recite  
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1 virtually the same limitations, but claim 1 is written as a “system” claim and claim 12 is written  
 2 as a “method” claim. Despite being styled as a “system,” claim 1 is, in substance, nothing more  
 3 than a method claim. See *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2360 (2014)  
 4 (“[T]he system claims are no different from the method claims in substance. The method claims  
 5 recite the abstract idea implemented on a generic computer; the system claims recite a handful of  
 6 generic computer components configured to implement the same idea.”); *Accenture Global*  
 7 *Servs., GMBH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1341 (Fed. Cir. 2013) (“[S]ystem  
 8 claims that closely track method claims and are grounded by the same meaningful limitations will  
 9 generally rise and fall together.”). Claim 12 is representative of the two independent claims:

- 10 12. A method of training employees via a hosted learning  
 11 management training system, each employee having a unique  
 12 identifier, comprising the steps of:
- 13 a) presenting a high bandwidth training program including a  
 14 test having questions on at least one device associated with  
 15 a local computer having a low bandwidth connection;
  - 16 b) enabling an employee to take the test and enter answers to  
 17 the questions on the local computer via a first human-  
 18 computer interface connected to the local computer
  - 19 c) providing a remote computer server at a central location in  
 20 communication with the at least one local computer via the  
 21 low bandwidth connection and adapted to receive low  
 22 bandwidth test information from the at least one local  
 23 computer;
  - 24 d) transmitting from the local computer to the central server  
 25 only the employee identifier and the low bandwidth test  
 26 information via the low bandwidth connection when an  
 27 employee interacts with the training program; and
  - 28 e) enabling a manager to access the low bandwidth test  
 information from the central server in real time.

’025 patent, 9:54-10:10.

23 Significantly, during the prosecution of the ’025 patent, the USPTO rejected the then  
 24 pending claims as invalid under 35 U.S.C. § 101. See Exhibit 3 (October 13, 2006 Office  
 25 Action), pp. 2-3. These rejections were prior to the Supreme Court’s *Mayo* and *Alice* decisions,  
 26 which substantially raised the bar for patent eligibility as noted below. The applicant overcame  
 27 this rejection by amending the claims to add another limitation: “a second interface enabling a  
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1 manager to access said test information on said central computer” and “thereby allowing dynamic  
2 managerial oversight (Claim 1) and “enabling a manager to access the test information from the  
3 central server in real time” (Claim 13, now Claim 12). *See* Exhibit 4 (May 17, 2007 Response to  
4 Office Action), pp. 2, 5 and 11-12. The ‘025 patent subsequently issued on November 6, 2007.

5 Each of the concepts described in the independent claims – presenting a training program  
6 to an employee on a computer, enabling an employee to take a test by entering answers on a  
7 computer, and transmitting over a network test information to a supervisor for review – was well-  
8 known as of the date of the ‘025 patent, as the ‘025 patent itself makes clear. *See, e.g.*, ‘025  
9 patent at 1:39-62 (describing use of “recorded training programs”); 2:11-13 (“Certain  
10 conventional employee training systems place their training programs on a central computer that  
11 is accessible remotely”); 1:62-2:3 (“enter[ing] [test data] into a central database in a sortable  
12 manner” allows “tracking of employee test data” and ability “to sort test data by any number of  
13 different variables”). The patent does not disclose or teach any concrete way of implementing the  
14 generic methodology recited in the claims to purportedly improve on the existing technology. As  
15 discussed below, the additional limitation that overcame the USPTO’s initial 101 rejection merely  
16 describes another generic computer component (a web interface) and another generic computing  
17 function (enabling access to data on a central server) and therefore adds nothing inventive as  
18 articulated in the Supreme Court’s *Alice* and *Mayo* decisions to transform the abstract idea into  
19 patent-eligible subject matter.

20 The ‘025 patent also includes several dependent claims, none of which meaningfully adds  
21 to or limits the independent claims from which they depend. Those claims are directed to: an  
22 interface that includes at least one of a keyboard, a mouse, a touch-screen, etc. (Claim 7);  
23 transmitting particular types of test information from the local computer to the central server for  
24 access by the employee (Claim 11); sorting software that processes test information on the central  
25 server (Claims 2, 6, 16); a website for managers to remotely access test information on the central  
26 server (Claims 4, 13, 14); updating the website and test information presented to the manager  
27 (Claims 5, 15); communication between the central server and multiple local computers (Claims  
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9, 19); and putting the training program on a particular type of media, e.g. a CD-ROM (Claim 10). Each of these dependent claims recites only a different permutation of the fundamental practices of presenting a test to an employee and receiving, processing and reviewing the employee's answers, using nothing more than routine, well-understood generic functions of generic computer components.

### III. ARGUMENT

#### A. **THE '025 PATENT IS INVALID FOR CLAIMING THE UNPATENTABLE ABSTRACT IDEA OF ADMINISTERING A TEST.**

##### 1. Abstract Ideas Have Long Been, and Continue to Be, Ineligible Subject Matter.

Under Section 101 of the Patent Act, “[w]hoever invents or discovers any new and useful *process, machine, manufacture, or composition of matter*, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101 (emphasis added). The Supreme Court has “long held that this provision contains an important implicit exception [for] [l]aws of nature, natural phenomena, and abstract ideas.” *Alice*, 134 S. Ct. at 2354 (citing *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)) (internal quotations omitted). It has been well established “for more than 150 years” that a patent directed to a naked idea is outside the scope of patent eligibility. *Id.* at 2354 (citing *Bilski v. Kappos*, 561 U.S. 593, 594 (2010); *O’Reilly v. Morse*, 56 U.S. 62, 112-20 (1853); *Le Roy v. Tatham*, 55 U.S. 156, 174-75 (1852)). The concern underlying the abstract idea doctrine is that a patentee might “pre-empt” all ways—including new ways invented by the public in the future—of achieving the results claimed by the patent. *Alice*, 134 S. Ct. at 2354 (“We have described the concern that drives this exclusionary principle as one of preemption”); *Mayo*, 132 S. Ct. at 1293 (preemption would “tend to impede innovation more than it would tend to promote it”). A patent claiming a naked idea “‘would risk disproportionately tying up the use of the underlying’ idea[.]” *Alice*, 134 S. Ct. at 2354-55 (citing *Mayo*, 132 S. Ct. at 1294).

“The Supreme Court in *Alice* clarified the two-step framework, first set forth in *Mayo*, that courts must use in ‘distinguishing patents that claim laws of nature, natural phenomena, and

1 abstract ideas from those that claim patent-eligible applications of those concepts.’ First, the  
 2 court must determine whether the claims at issue are directed to one of those patent-ineligible  
 3 concepts.” *Kickstarter, Inc. v. Fan Funded, LLC*, No. 11 Civ. 6909(KPF), 2015 WL 3947178, at  
 4 \*6 (S.D.N.Y. June 29, 2015) (quoting *Alice*, 134 S. Ct. at 2355) (internal citation omitted).  
 5 Abstract ideas may include a “fundamental economic practice long prevalent in our system of  
 6 commerce,” a “longstanding commercial practice,” or “a method of organizing human activity,”  
 7 even if the claim is not addressed to a “preexisting, fundamental truth” like a mathematical  
 8 formula or law of nature. *Alice*, 134 S. Ct. at 2356 (citing *Bilski*, 561 U.S. at 611, 619); *see also*  
 9 *id.* at 2356 (a method of mitigating settlement risk using a third party); *Bilski*, 561 U.S. at 609 (a  
 10 method for hedging against the financial risk of price fluctuations); *Ultramercial*, 772 F.3d at  
 11 714–15 (a method for displaying an advertisement in exchange for access to copyrighted media  
 12 and using an advertisement as a currency); *buySAFE v. Google, Inc.*, 765 F.3d 1350, 1352 (Fed.  
 13 Cir. 2014) (a method by which a third party can guarantee a sales transaction); *Dealertrack, Inc.*  
 14 *v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (a method for processing information through a  
 15 clearinghouse). Fundamentally, an idea is impermissibly abstract where, as here, it is “devoid of  
 16 a concrete or tangible application.” *Ultramercial*, 772 F.3d at 715; *Microstrategy Inc. v. Apttus*  
 17 *Corp.*, 2015 WL 4425828, at \*7 (E.D. Va. July 7, 2015) (“Identifying, organizing, and presenting  
 18 stored information is an abstract idea that is ‘devoid of a concrete or tangible application.’”) (citing  
 19 *Market Track, LLC v. Efficient Collaborative Retail Mktg., LLC*, No. 14 c 4957, 2015 WL  
 20 3637740, at \*5–6 (N.D. Ill. June 12, 2015) (quoting *Ultramercial, Inc.*, 772 F.3d at 715).

21 “Second, if [the claims at issue are directed to one of those patent-ineligible concepts],  
 22 then the court must determine whether there is something else in the claims—an ‘inventive  
 23 concept’—‘sufficient to ensure that the patent in practice amounts to significantly more than a  
 24 patent upon the ineligible concept itself.’” *Kickstarter*, 2015 WL 3947178, at \*6 (quoting *Alice*,  
 25 134 S. Ct. at 2355). The second step asks whether the “additional features” of the claim ensure  
 26 that it “is more than a drafting effort designed to monopolize the [abstract idea.]” *Alice*, 134 S.  
 27 Ct. at 2357 (citing *Mayo*, 132 S. Ct. at 1297). “The Court in *Alice* made clear that a claim that is  
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1 directed to an abstract idea does not move into [Section] 101 eligibility territory by ‘merely  
 2 requir[ing] generic computer implementation.’ *Kickstarter*, 2015 WL 3947178, at \* 6 (quoting  
 3 *Ultramercial*, 772 F.3d at 713); *see also OIP Technologies, Inc. v. Amazon.Com, Inc.*, 788 F.3d  
 4 1359, 1363 (Fed. Cir. 2015) (“relying on a computer to perform routine tasks more quickly or  
 5 more accurately is insufficient to render a claim patent eligible”) (citing *Alice*, 134 S. Ct. at 2359  
 6 (“use of a computer to create electronic records, track multiple transactions, and issue  
 7 simultaneous instructions” is not an inventive concept)). Nor does adding “well-understood,  
 8 routine, conventional activities previously known to the industry”; limiting an idea to a particular  
 9 field of use or a particular technological environment; adding data-gathering steps; or adding any  
 10 other token post- or extra-solution activity. *Alice*, 134 S. Ct. at 2357-59 (internal quotations  
 11 omitted).

12 *Alice* has led to a chorus of courts invalidating patents directed to software and business  
 13 methods that implement long-standing abstract concepts and methods of organizing human  
 14 activity using generic computer components, like the ’025 patent. *See, e.g., IPLearnFocus, LLC*  
 15 *v. Microsoft Corp.*, No. 14-cv-00151-JD, 2015 WL 4192092, at \*4-5 (N.D. Cal. July 10, 2015)  
 16 (invalidating patent for computer-based method to monitor students’ behavior during teaching  
 17 and adjust teaching in real-time, finding the claims “plainly directed at implementing . . . the  
 18 abstract idea of conventional teaching that not only happens in schools across the country every  
 19 day, but has probably existed as long as there has been formal education”) (quotation marks  
 20 omitted); *Becton, Dickinson and Co. v. Baxter Intern’l Inc.*, No. 1-14-cv-222-LY, at pp. 9-11  
 21 (W.D. Tex. Aug. 3, 2015) (invalidating patent directed to a computer-based method for  
 22 pharmacist to remotely supervise and verify the work of non-pharmacists to ensure the work’s  
 23 accuracy, finding “supervision and verification . . . is an abstract idea, one that amounts to a  
 24 fundamental concept and longstanding practice applicable to many fields, one of which is  
 25 pharmacy”); *Kickstarter, Inc. v. Fan Funded, LLC*, No. 11 Civ. 6909(KPF), 2015 WL 3947178,  
 26 at \*6 (S.D.N.Y. June 29, 2015) (invalidating patent directed to computer-based crowd-funding  
 27 method, finding that the claims “are squarely about” the “abstract concept” of “patronage—a  
 28



concept that is ‘beyond question of ancient lineage’”) (quoting *buySAFE*, 765 F.3d at 1355); *DietGoal Innovations, Inc. v. Bravo Media LLC*, 33 F.Supp.3d 271, 283-288 (S.D.N.Y. 2014) (invalidating patent claims directed to computer-based meal planning that “recite nothing more than the abstract concept of selecting meals for the day, according to one’s particular dietary goals and food preferences,” finding “[m]eal planning is sure a ‘long-prevalent’ practice” that “humans have assured engaged” in “for millennia.”) (quoting *Bilski*, 130 S. Ct. at 3231); *see also Enfish, LLC v. Microsoft Corp.*, 56 F.Supp.3d 1167, 1170 (C.D. Cal. 2014) (noting that the Supreme Court has recently “indicated that patentability [under § 101] is a higher bar”). Indeed, since *Alice*, district courts in more than 80 cases have found patent claims invalid under § 101, including 44 at the pleading stage. *See* Exhibit 5 (table listing and summarizing holdings of those 44 cases).

## 2. The ‘025 Patent is Drawn to the Abstract Idea of Administering a Test.

As discussed above, “a claim is directed to an abstract idea when it describes a fundamental concept or longstanding practice” or “methods of organizing human activity.” *Morales v. Square, Inc.*, CV No. 5:13-cv-1092-DAE, 2014 WL 7396568, at \*11 (W.D. Tex. Dec. 30, 2014). “In determining whether a claim is directed to an abstract idea, courts look past the claim language to ‘the purpose of the claim—in other words, what the invention is trying to achieve.’” *Morales*, 2014 WL 7396568, at \*11 (quoting *CalTech*, 59 F.Supp.3d at 991); *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 56 F.Supp.3d 813, 820 (E.D. Va. 2014) (analyzing a claim “[o]n its face and looking past the mere claim language”); *Alice*, 134 S. Ct. at 2356 (finding that a claim reciting a specific, multiple-step process was drawn to the abstract concept of mitigating settlement risk using a third party).

Here, on their face, the claims of the ‘025 patent are directed to the “longstanding practice” of administering a test, and “a method of organizing human activity”—learning. For example, claim 12 includes such elements as “a test having questions,” “enabling an employee to take the test and enter answers to the questions,” “transmitting . . . test information” and “enabling a manager to access . . . test information.” ‘025 patent at 9:54-10:10. These steps are



1 squarely about administering a test—a concept as old as education itself. *See, e.g.,*  
2 *IPLearnFocus, LLC v. Microsoft Corp.*, No. 14-cv-00151-JD, 2015 WL 4192092, at \*5 (N.D.  
3 Cal. July 10, 2015) (invalidating patent “directed at implementing ... the abstract idea of  
4 conventional teaching that not only happens in schools across the country every day, but has  
5 ‘probably existed as long as there has been formal education.’”) (quoting *IPLearn, LLC v. K12*  
6 *Inc.*, No. CV 11–1026–RGA, 2014 WL 7206380, at \*6 (D. Del. Dec. 17, 2014)).

7       The asserted claims, and the abstract idea they implicate, are comparable to those of other  
8 cases finding patents ineligible. For example, in *IPLearnFocus*, the patents at issue claimed “the  
9 invention of ‘learning via a computing device, and more particularly to learning method and  
10 system using detached sensor.” *Id.* at \*1. The court found that the steps described by the claims  
11 – “present study materials; monitor student’s behavior through sensor; analyze monitored results  
12 with rules; provide indication on student’s concentration; react according to indication” – “seek to  
13 implement on a computer the watchful eye of a good teacher.” *Id.* at \*4-5. The court found that  
14 these “steps are an abstraction, ‘addressed to fundamental human behavior related to instruction’;  
15 “[p]ut aside the parts reciting standard technology (‘display,’ ‘imaging sensor,’ ‘processor,’ etc.),  
16 and what is left” are “steps involved in the abstract idea of teaching.” *Id.* (quoting *IPLearn, LLC*  
17 *v. K12 Inc.*, No. CV 11–1026–RGA, 2014 WL 7206380, at \*6 (D. Del. Dec. 17, 2014). Likewise,  
18 here, stripped of the parts reciting standard technology (e.g., “local computer,” “human-computer  
19 interface,” “training program,” “display,” “server,” “website,” “sorting software”), all of the  
20 asserted claims describe abstract steps (e.g., “enabling an employee to take the test and enter  
21 answers to the questions,” “transmitting . . . test information,” “enabling a manager to access . . .  
22 test information”) that are “addressed to fundamental human behavior related to instruction,”  
23 namely administering a test to train a person. *See id.*; *see also Vehicle Intelligence and Safety*  
24 *LLC v. Mercedes-Benz USA LLC*, Case No. 13 C 4417, 2015 WL 394273, at \*6 (N.D. Ill. Jan. 29,  
25 2015) (invalidating patent claims on method of screening equipment operators for impairments,  
26 finding claims were directed to the abstract idea of “testing operators of any kind of moving  
27 equipment for any kind of physical or mental impairment”).  
28

1           This concept of administering a test is an abstract idea for section 101 purposes because it  
2 has “no particular concrete or tangible form.” *See Ultramercial*, 772 F.3d at 715. The claims are  
3 not limited to “any particular application or use, but instead simply describes, at a high level of  
4 generality, the concept of” administering a test. *See Morales*, 2014 WL 7396568, at \*11.  
5 Moreover, the asserted claims and the specification of the patent-in-suit make clear that the  
6 claimed abstract idea is not limited to one specific type of computer or application, but rather may  
7 be realized broadly in numerous ways including without even using all of the recited generic  
8 computer components. *See, e.g.*, ’025 patent, 4:67-5:1 (“Alternatively, an employee could write  
9 his answers down on a piece of paper”); 5:8-30 (“the entire training program could be conducted  
10 over the telephone as a teleconference [which] *might eliminate the need for a local computer*”).  
11 Indeed, stripped of the generic computer components, the asserted claims are directed to the  
12 patent-ineligible concept of presenting a test to an employee, and a supervisor receiving,  
13 processing, and/or reviewing the employee’s answers to the test. For example, the steps of  
14 independent claim 12 (referenced above) merely recite steps that are equivalent to those one  
15 could take—and have taken—in the physical world and existed long before the patent-in-suit:  
16 providing an employee a test booklet with test questions, enabling the employee to take the test  
17 by writing his or her answers on, for example, a chalkboard under his or her name, and enabling a  
18 manager to watch the employee write the answers on the chalkboard in real-time. *See Adrea,*  
19 *LLC v. Barnes & Noble, Inc. et al.*, Case No. 1:13-cv-04137, p. 11-12 (S.D.N.Y. July 24, 2015)  
20 (granting motion for judgment on the pleadings of invalidity under section 101 where the “patent  
21 claims merely recite, in broad and generic terms, steps that are equivalent to those one could take  
22 in the physical world”). Similarly, dependent claim 13 likewise recites steps that can be taken in  
23 the physical world (the employee’s answers can be transcribed by pen and paper and mailed to  
24 the manager at a remote location), as does dependent claim 16 (the manager can sort the test  
25 answers by, *e.g.*, employee name alphabetically, using his or her mind, with or without a pen and  
26 paper, as teachers have done since the beginning of formal education). The asserted claims here  
27 are no different than the numerous cases finding software patents invalid under section 101 since  
28

the Supreme Court’s *Alice* decision. *See, e.g., DietGoal Innovations*, 33 F.Supp.3d at 284 (invalidating patent claims that “recite steps that, although computer-implemented by virtue of the patent application, could ‘be performed in the human mind, or by a human using pen and paper,’” because “a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”) (quoting *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011)); Exhibit 5 (summarizing holdings of 43 post-*Alice* cases finding patent claims invalid under § 101 at the pleading stage, the majority involving software patents). All of the other depending claims recite steps that can be taken in the physical world without the use of computers.

3. The Claims Add No “Inventive Concept” Sufficient to “Transform” the Abstract Idea into a Patent-Eligible Application.

If a claim is directed to an abstract idea, the court must “determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1294). Categories of elements that do not “transform” an abstract idea and steps that are not “inventive” include those that are “well-understood, routine, conventional.” *Id.* at 2359 (quoting *Mayo*, 132 S. Ct. at 1294). Implementation of an abstract idea on a “generic” computer is also not “inventive.” *Id.* at 2357-58 (“Simply appending conventional steps, specified at a high level of generality, [is] not ‘enough’ to supply an ‘inventive concept’ . . . . [T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”) (quoting *Mayo*, 132 S. Ct. at 1294, 1297, 1300; *Bilski*, 561 U.S. at 610); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (invocation of generic computer functionality “adds no inventive concept”). Here, as explained above, the claims of the ’025 patent recite only generic computing equipment and conventional functionality incidental to implementing the abstract idea of administering a test and tracking and accessing test results. They are not inventive. *See IPLearnFocus, LLC v. Microsoft Corp.*, No. 14-cv-00151-JD, 2015 WL 4192092, at \*5 (N.D. Cal. July 10, 2015) (“The only novelty [patentee] asserts is to implement traditional teaching

1 practices on a generic computer platform. None of the claims or specifications in the patents  
2 describes any hardware or software beyond commonly available computer processors, sensors,  
3 and displays.”). That the recited generic computer components of the asserted claims may make  
4 this process faster or more convenient does not make the asserted claims patentable. *See OIP*  
5 *Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360, 1362-1364 (Fed. Cir. 2015)  
6 (affirming district court order granting judgment on the pleadings that asserted patent claims were  
7 invalid under section 101 because “the patent-in-suit claims no more than an abstract idea  
8 coupled with routine data-gathering steps and conventional computer activity”).

9 The computer elements in independent claims 1 and 12 of the asserted patent recite  
10 generic, nondescript computer components and functionalities including a “local computer,” a  
11 “training program including an interactive test having questions,” a “training session display,” a  
12 “first human-computer interface . . . enabling an employee to enter answers to questions,” “each  
13 employee having a unique identifier,” a “low bandwidth connection,” a “remote computer server  
14 at a central location communicatable with” and receiving an employee’s unique identifier and test  
15 information from the local computer, and a “second interface enabling a manger to access” the  
16 test information on the central server in real time. ’025 patent at 8:37-59, 9:54-10:10. The  
17 patentee did not purport to improve any of these conventional and well-known computer  
18 technologies. These and the other asserted claims do not add any inventive concept that is  
19 sufficient to make the unpatentable abstract idea patentable. *See Adrea, LLC v. Barnes & Noble,*  
20 *Inc. et al.*, Case No. 1:13-cv-04137, p. 13 (S.D.N.Y. July 24, 2015) (quoting *Alice Corp.*, 134 S.  
21 Ct. at 2359, and concluding that “every other step recited by the patent claims, are simply ‘well-  
22 understood, routine, conventional activities previously known to the [computer] industry’”). As  
23 the Supreme Court recently reaffirmed, patents that “improve the functioning of a computer” or  
24 “effect an improvement” in some “other technology or technical field” may be inventive, but  
25 patents that merely implement an idea using generic computers performing generic functions—  
26 like the ’025 patent here—are not. *See Alice*, 134 S. Ct. at 2358-60; *cf. DDR Holdings, LLC v.*  
27 *Hotels.com, L.P.*, 773 F.3d 1245, 1258–59 (Fed. Cir. 2014) (finding a computer-implemented  
28

1 method of generating a composite webpage patent-eligible because the claims do not rely on a  
 2 “computer network operating in its normal, expected manner” but instead “specify how  
 3 interactions with the Internet are manipulated to yield a desired result . . . that overrides the  
 4 routine and conventional sequence of events ordinarily triggered by the click of a hyperlink” to  
 5 address an “Internet-centric challenge”); *Cal. Inst. of Tech. v. Hughes Communications Inc.*, 59  
 6 F.Supp.3d 974, 994 (C.D. Cal. 2014) (“*CalTech*”) (finding error detection algorithms involving  
 7 irregular repetition of bits and use of linear transform operations patent-eligible because they are  
 8 “narrowly defined” inventive concepts “tied to a specific error correction process” and “are not  
 9 necessary or obvious tools for achieving error correction”).

10 So *conventional* is the implementation of the claims that the specification even uses that  
 11 very word to describe features of the claimed invention, such as “conventional interfaces” that  
 12 “could be connected via wire or wirelessly in a conventional manner,” and a “communications  
 13 link” that “is preferred [to be] a conventional Internet connection.” ‘025 patent at 3:11-14, 5:43-  
 14 46; see *Morales*, 2014 WL 7396568, at \*15 (claims invalid where specification recited  
 15 “conventional network control center with a mainframe computer,” “conventional packet  
 16 switcher” and “conventional media”). So *generic* is the implementation of the claims that the  
 17 specification describes the “training program” at the heart of the claimed “inventive training  
 18 system” as simply “software (e.g., a Macromedia Director file).” And the ‘025 patent frames the  
 19 invention as being network-based: claim 1 includes “transmit[ing] only the employee’s identifier  
 20 and . . . test information to said central server thereby allowing dynamic managerial oversight,”  
 21 and claim 12 adds “enabling a manager to access the . . . test information from the central server  
 22 in real time.” Under Federal Circuit law, the mere disclosure of transmission of data over a  
 23 network is a generic step, as “transfer of content between computers is merely what computers  
 24 do.” *Ultramercial*, 772 F.3d at 717; see also *buySAFE*, 765 F.3d at 1355 (“That a computer  
 25 receives and sends the information over a network—with no further specification—is not even  
 26 arguably inventive.”).

27 Since Alice, district courts have invalidated many patents like the ‘025 patent for want of  
 28

1 an “inventive concept.” Two recent decisions in this District are instructive. In *Kickstarter, Inc.*  
 2 *v. Fan Funded, LLC*, No. 11 Civ. 6909(KPF), 2015 WL 3947178, at \*11 (S.D.N.Y. June 29,  
 3 2015), the court invalidated patent claims directed to a computerized method of crowd-funding.  
 4 A representative claim included the following limitations: “(i) a computer operating either on the  
 5 Internet or other network with access to a server; (ii) providing software tools with a suite of  
 6 features allowing management of one or more creative projects; (iii) making certain types of  
 7 offers associated with the project in exchange for funds for the project; (iv) facilitating the  
 8 acceptance of offers by fans; (v) storing contact and marketing information of those who have  
 9 accepted offers in exchange for funds in a database; and (vi) providing software tools that enable  
 10 and control the exchange of information with a fan through the database.” *Id.* at \*3. The court  
 11 held that “[b]eyond the abstract idea of patronage, the claims merely recite ‘well understood,  
 12 routine conventional activities,’ by requiring conventional computer activities or routine data  
 13 gathering steps . . . ‘previously known to the industry.’” *Id.* at \*11 (quoting *Alice*, 134 S. Ct. at  
 14 2357, 2359). Likewise, here, the limitations described in claim 12 of the ‘025 patent at each step  
 15 of the process – (i) a local computer connecting to the Internet or other network with access to a  
 16 remote computer server; (ii) software enabling an employee to take a test on the local computer;  
 17 (iii) an interface enabling an employee to take a test on the local computer; (iv) transmitting  
 18 employee identification and test information from the local computer to the server; and (v)  
 19 enabling a manager to access test information from the server in real time – are purely  
 20 conventional functions performed by the generic computer hardware and software and thus  
 21 cannot qualify as an inventive concept. *See id.*; *see also Ultramercial*, 772 F.3d at 716 (finding  
 22 steps including “updating an activity log, requiring a request from the consumer to view the ad,  
 23 restrictions on public access, and use of the Internet” were “routine” and failed to recite an  
 24 inventive concept).

25 Similarly, in *DietGoal Innovations, Inc. v. Bravo Media LLC*, 33 F.Supp.3d 271, 284-288  
 26 (S.D.N.Y. 2014), the court found that the function performed by the computer at each step of the  
 27 claimed “computerized meal planning” process was purely conventional: “Steps 1 and 2 involve  
 28

1 creating customized lists by retrieving information from a stored database—one of the most basic  
2 functions of the generic computer.” *Id.* at 287 (citing *SmartGene, Inc. v. Advanced Biological*  
3 *Labs., SA*, 555 Fed. Appx. 950, 954 (Fed. Cir. 2014) (computerized claims that do “no more than  
4 call on a ‘computing device,’ with basic functionality for comparing stored and input data and  
5 rules, to do what doctors do routinely” not patent eligible). “Step 3 likewise amounts to  
6 conventional computer tasks: manipulating data based on inputs from the user, making  
7 computations from stored data, and displaying the results on a visual display.” *Id.* (citing  
8 *Accenture Global Services, GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1338, 1344-45  
9 (Fed. Cir. 2013) (computerized aspects of method claim directed to “generating tasks to be  
10 performed in an insurance organization,” including a “data component that stores, retrieves and  
11 manipulates data” and a client component that “transmits and receives data to/from the data  
12 component,” insufficient to transform abstract idea into concrete application of that idea). These  
13 are precisely the same conventional computing tasks – data transmission, processing, retrieval,  
14 manipulation and visual display – that the ‘025 patent describes to implement the abstract idea of  
15 administering a test. *See id.*; *see also Amdocs (Israel) Ltd. v. OpenNet Telecom, Inc.*, 56  
16 F.Supp.3d 813 (E.D. Va. Oct. 24, 2014) (no inventive concept in patent claims for data mediation  
17 software; claims merely described using conventional computing functions including network  
18 communication and collecting, processing, filtering, storing, and outputting data).

19 District courts also routinely invalidate patents where, as here, the recited conventional  
20 computer elements lack any specificity in directing the practitioner how to implement the claimed  
21 methods and systems. *See Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012)  
22 (patent invalid where it “does not specify how the computer hardware and database are specially  
23 programmed to perform the steps claimed in the patent”); *Intellectual Ventures I, LLC v.*  
24 *Motorola Mobility LLC*, No. 11-908-SLR, 2015 WL 846532, at \*8 (D. Del. Feb. 24, 2015)  
25 (“[Patentee] fails to identify any language in the claims or the specification demonstrating that the  
26 generic computer components function in an unconventional manner or employ sufficiently  
27 specific programming.”); *Clear with Computers, LLC v. Altec Indus., Inc.*, No. 6:14-cv-00089-



1 JRG, 2015 WL 993392, at \*4-5 (E.D. Tex. Mar. 3, 2015) (invalidating patent that did not identify  
2 any “inventive algorithms” even where it might implicitly “involve complex computer  
3 programming”). Here, although the ’025 patent describes “enabling an employee to enter  
4 answers to the [test] questions in the local computer” (*id.* at 2:33-35), “separating the training  
5 program from the answers submitted by the employee” so that “only the answer data and other  
6 test information need be transmitted to the server for processing” (*id.* at 2:54-57), and the central  
7 server being “adapted to receive . . . test information” (’025 patent at 9:65-10:3), the patent does  
8 not disclose any specialized programming or other specific technology for accomplishing these  
9 functions. Similarly, although the ’025 patent describes “a dynamically created website” where  
10 “test information is visually updated and presented to the manager” (*id.* at 3:8-11) and that  
11 “updates the test information whenever the manager accesses [it]” (*id.* at 3:54-56) using “sorting  
12 software [that] can easily create charts and tables viewable by the supervisor on demand” (*id.* at  
13 6:32-34), the patent does not disclose any specialized programming or other specific technology  
14 to implement a website capable of providing the described functionality. The patent provides no  
15 direction as to how to construct the claimed programs, software, interfaces or websites it  
16 describes; instead, the patent merely describes the function performed by these generic computer  
17 components and the intended result. *See Kroy IP Holdings, LLC v. Safeway, Inc.*, No. 2:12-cv-  
18 800-WCB, \_\_\_ F.Supp.3d \_\_\_, 2015 WL 3452469, at \*16, 23 (E.D. Tex. May 29, 2015) (claims  
19 reciting “an inventory management system” using “code adapted to provide” incentive award  
20 program fulfillment functions “are not recitations of mechanisms. Those are recitations of  
21 objectives. In that regard, the claims are effectively functional in nature, and would read on any  
22 method of achieving those objectives with a computer.”); *Affinity Labs of Texas LLC v. DirecTV,*  
23 *LLC*, Case No. 6:15-CV-0030, 2015 WL 3764356, at \*8 (W.D. Tex. July 7, 2015) (claims  
24 reciting an “application” that “enables” a device to present a “graphical user interface” provided  
25 no inventive concept; patent was “devoid of any teaching or blueprint explaining how the device  
26 can do what it purports to do.”); *Clear with Computers, LLC v. Altec Indus., Inc.*, No. 6:14-cv-79,  
27 2015 WL 993392, at \*8 (“The claims identify no inventive algorithms or otherwise creative  
28



1 means for generating a customized sales proposal other than an instruction that the basic process  
2 be performed using generic computer components.”); *Ultramercial*, 772 F.3d at 722 (Mayer, J.,  
3 concurring) (noting that “[p]recise instructions for implementing an idea [may] confine the reach  
4 of a patent”).

5 Independent claims 1 and 12 of the ’025 patent thus fail to disclose an inventive concept  
6 that would transform the abstract idea of administering a test into a patent-eligible application.  
7 These claims are invalid under § 101.

8  
9 4. The Dependent Claims Add Nothing Inventive.

10 This Court need not consider every claim of the ’025 patent before concluding that all are  
11 directed to ineligible subject matter under § 101. *Content Extraction and Transmission LLC v*  
12 *Wells Fargo Bank, National Association*, 776 F.3d 1343 at 1348 (Fed. Cir. 2014) (finding no  
13 error in defendant or district court declining to address every challenged claim individually  
14 because each recited “little more than the same abstract idea” and plaintiff had not explained why  
15 any of the claims differed from a representative claim for § 101 purposes); *Becton*, at 3 n.3  
16 (“Where claims are ‘substantially similar and linked to the same abstract idea,’ the court may  
17 dispose of other claims in the patent with less detail” and “need not consider each claim  
18 distinctly.”) (quoting *Content Extraction*, 776 F.3d at 1348). Nonetheless, none of the dependent  
19 claims of the ’025 patent “offers a meaningful limitation” over the abstract idea claimed by the  
20 independent claims. *See Alice*, 134 S. Ct. at 2360. At best, they (1) add trivial, generic  
21 computing functionality, (2) attempt to narrow the claims to a particular technological  
22 environment such as “implementation via computers,” *id.*, or (3) include other “well understood,  
23 routine, conventional activity.” *Mayo*, 132 S. Ct. at 1299.

24 Some claims add still more generic computing components or functionality, for example:  
25 a keyboard, a mouse, a touch-screen, a CD-ROM, an audio cassette, etc. (Claims 7, 10);  
26 transmitting particular types of test information from the local computer to the central server for  
27 access by the employee (Claim 11); sorting software that processes test information on the central  
28 server using various criteria (Claims 2, 6, 16); a website for managers to remotely access test

1 information on the central server (Claim 4, 13, 14); a “dynamically created website” wherein test  
 2 information is visually updated and presented to the manager (Claims 5, 15); and “selective  
 3 communication” between the central server and multiple local computers (claims 9, 19). All of  
 4 this is generic computing components and functionality or, at best, efforts to limit the reach of the  
 5 claims to a particular technological environment. They add no inventive concept because  
 6 keyboards, CD-ROMs, networks, displays, interfaces, websites and software that can administer  
 7 tests and enable the receipt, processing and review of test answers, are general-purpose  
 8 computing equipment or functionalities, none of which is particularized in the claims. *See Alice*,  
 9 134 S. Ct. at 2358 (“generic computer implementation” cannot rescue ineligible claim); *buySAFE*,  
 10 765 F.3d at 1355 (generic computing functionality adds nothing to ineligible claim to abstract  
 11 idea); *Wolf v. Capstone Photography*, No. 2:13-CV-09573, 2014 WL 7639820, at \*12 (C.D. Cal.  
 12 Oct. 28, 2014) (“computer network server” and “web-site server” are generic technology  
 13 insufficient to confer patent eligibility); *Kickstarter, Inc. v. Fan Funded, LLC*, No. 11 Civ.  
 14 6909(KPF), 2015 WL 3947178, at \*6 (S.D.N.Y. June 29, 2015) (“application programs”  
 15 providing “software tools” are generic technology insufficient to confer patent eligibility); *Cogent*  
 16 *Medicine, Inc. v. Elsevier Inc.*, 70 F.Supp.3d 1058, 1064-1065 (N.D. Cal. 2014) (“enhanced  
 17 interface” for searching database did not supply inventive concept).

18       These trivial additions are insufficient to rescue a patent that is otherwise invalid under §  
 19 101. And indeed, these dependent claims together demonstrate the unlimited range of possible  
 20 implementation strategies for a patent that claims an abstract idea such as the ’025 patent. *See*  
 21 *Wolf*, 2014 WL 7639820, at \*12 (dependent claims invalid where they recite alternative,  
 22 conventional methods of implementing the abstract idea which do not significantly limit the  
 23 claims, and which together preempt the field). The dependent claims thus add no “inventive  
 24 concept” sufficient to rescue the asserted patent’s claim to the abstract idea of administering a  
 25 test. They add limitations that are incidental to this concept, that name generic computing  
 26 functionalities, or that recite conventional activity. They are thus invalid under § 101.

27       **B. RESOLVING QUESTIONS OF PATENT ELIGIBILITY ON THE**  
 28       **PLEADINGS IS APPROPRIATE.**

Patentability under section 101 is a threshold issue in patent cases and therefore the Court can and should assess the eligibility of the asserted patent at the pleading stage.<sup>1</sup> *See, e.g., Bilski*, 561 U.S. at 602 (§ 101 is a “threshold test”); *Ultramercial*, 772 F.3d at 717 (Fed. Cir. 2014), Circuit Judge Mayer *concurring* (“First, whether claims meet the demands of 35 U.S.C. § 101 is a threshold question, one that must be addressed at the outset of litigation.”); *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1365 (Fed. Cir. 2015), Circuit Judge Mayer *concurring* (“I commend the district court’s adherence to the Supreme Court’s instruction that patent eligibility is a ‘threshold’ issue, *Bilski v. Kappos*, 561 U.S. 593, 602 (2010), by resolving it at the first opportunity”—on a motion for judgment on the pleadings). Indeed, since *Alice*, at least 44 district courts have found patents invalid under section 101 on the pleadings. *See* Exhibit 5 (table listing and summarizing holdings of those 44 cases). Also since *Alice*, the Federal Circuit has affirmed at least five pre-*Alice* district court decisions finding patents invalid under section 101 on the pleadings. *See* Exhibit 6 (table listing and summarizing holding of those five cases). “There is no requirement that the district court engage in claim construction before deciding § 101 eligibility.” *CyberFone Sys., LLC v. CNN Interactive Group, Inc.*, 558 F. App’x 988, 991 n.1 (Fed. Cir. 2014); *see Content Extraction*, 776 F.3d at 1349.

This Court should follow the assembly of cases since *Alice* resolving § 101 questions early to relieve the parties of the expense and burden of proceeding through discovery and claim construction that will not alter the conclusion that the ’025 patent is directed to ineligible subject matter.

#### IV. CONCLUSION

Broadly claimed and technologically vacuous patents, such as the ’025 patent, needlessly

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<sup>1</sup> This motion is brought under Rule 12(c) rather than Rule 12(b)(6) because the pleadings have closed. Fed. R. Civ. P. 12(c). Nonetheless, “the standard for deciding a Rule 12(c) motion for judgment on the pleadings is identical to that of a Rule 12(b)(6) motion for failure to state a claim.” *Sewell v. Bernardin*, Case No. 14-3143, 2015 WL 4619519, at \*2 n.3 (2nd Cir. Aug. 4, 2015) (quoting *Patel v. Contemporary Classics of Beverly Hills*, 259 F.3d 123, 126 (2nd Cir. 2001)); *Wolf*, 2014 WL 7639820, at \*3-4 (§ 101 analysis is identical under Rule 12(b)(6) and Rule 12(c)).

1 threaten future innovators while contributing nothing to the public storehouse of knowledge. As  
2 Federal Circuit Judge Bryson recognized, sitting by designation in another district court:

3  
4 [S]uch patents, although frequently dressed up in the argot of  
5 invention, simply describe a problem, announce purely functional  
6 steps that purport to solve the problem, and recite standard  
7 computer operations to perform some of those steps. The principal  
8 flaw in these patents is that they do not contain an “inventive  
9 concept” that solves practical problems and ensures that the patent  
10 is directed to something “significantly more than” the ineligible  
abstract idea itself. As such, they represent little more than  
functional descriptions of objectives, rather than inventive  
solutions. In addition, because they describe the claimed methods  
in functional terms, they preempt any subsequent specific solutions  
to the problem at issue.

11 *Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, No. 2:13-CV-655, 66 F.Supp.3d 829, 845  
12 (E.D. Tex. 2014) (finding patents invalid under § 101) (quoting *Alice*, 134 S. Ct. at 2355, 2357).  
13 Those words could have been written for this case.

14 For all of these reasons, PlayerLync respectfully requests that the Court grant this motion  
15 and dismiss this case with prejudice.

16 Dated: August 25, 2015

/s/ Ryan Tyz

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on August 26, 2015.

/s/ Ryan Tyz  
Ryan Tyz